

REMARKS

Upon entry of the present amendment, claims 5-7 and 19 are pending in the above-referenced patent application and are currently under examination. Claims 1 and 19 have been amended. Support for the amendment to claim 1 can be found in claim 18 and in Example 2 at page 13. Support for the amendments to claim 19 can be found throughout the specification and in the amended CRF filed September 19, 2001. Reconsideration of the application is respectfully requested.

Interview

Applicants thank the Examiner for the Examiner interview of June 2, 2005. During the interview, the outstanding 35 USC § 112, first paragraph written description rejection to claims 5-7 was discussed. The Examiner noted that the incorporation of claim 18 into claim 5 would overcome the written description rejection and place the claims in condition for allowance, allowing for all other pending rejections. Applicants note that such an amendment has been made.

Also discussed was the pending obviousness-type Double Patenting rejection in view of US Application No. 10/903,992, filed July 30, 2004. Accordingly, the Examiner noted that the Double Patenting rejection would be withdrawn after all other outstanding rejections were overcome, and that a terminal disclaimer would not be required in the instant application.

Applicants thank the Examiner for withdrawing the 35 USC § 102(b) rejection in view of Zhu *et al.* and for not maintaining the 35 USC § 103(a) rejection under Barnes *et al.*

The claims are rejected under 35 USC § 112, first and second paragraph. Each of these rejections is addressed below in the order set forth by the examiner.

I. OBJECTIONS TO CLAIMS 5-7 AND 18-19

Claims 5-7 and 18-19 have been objected to as reciting the term "*Archaeoglobus fulgidis*" which is in conflict with the term used in the application "*Archaeoglobus fulgidus*." Applicants note that claims 5 and 19 have been amended to conform with the term used in the

application, and claim 18 has been canceled. Accordingly, Applicants respectfully note that the objection is now moot.

II. REJECTIONS UNDER 35 USC § 112, SECOND PARAGRAPH

Claim 19 has been rejected under 35 USC § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Applicants respectfully traverse the rejection in view of the comments below.

Applicants thank the Examiner for noting that SEQ ID NO. 21 was amended to SEQ ID NO. 18 in the application (see the amended CRF and the preliminary amendment filed September 19, 2001). The Examiner noted that the indefiniteness rejection would be overcome by amending claim 19 to read on SEQ ID NO. 18. Applicants note that claim 19 has been so amended. Accordingly, Applicants respectfully note that the rejection is now moot.

III. REJECTIONS UNDER 35 USC § 112, FIRST PARAGRAPH

Claims 5-7 have been rejected under 35 USC § 112, first paragraph, as allegedly failing to comply with the written description requirement. As noted above and to expedite prosecution, claim 5 has been amended to incorporate the limitations of claim 18, which was not subject to this rejection. Applicants, however, specifically reserve the right to pursue the original claims in one or more respectfully traverse the rejection. As the claims have been amended as suggested by the Examiner, Applicants respectfully request that the Examiner withdraw the rejection.

IV. DOUBLE PATENTING REJECTION

Claims 5-7 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting in view of claims 7, 9-10 and 12 of US Application No. 10/903,992 ("the '992 application"), filed July 30, 2004. As the Examiner noted in the Examiner Interview, the instant application is the earlier filed application, and thus the double patenting rejection would be withdrawn once all outstanding rejections were overcome (MPEP § 822.01), and no terminal disclaimer would be required. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection.

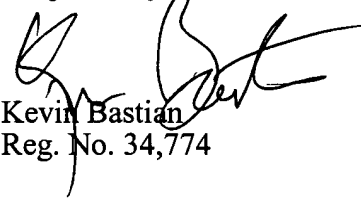
Appl. No. 09/856,850
Amdt. dated June 6, 2005
Amendment under 37 CFR 1.116 Expedited Procedure
Examining Group 1637

PATENT

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested. If a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned at 415-576-0200.

Respectfully submitted,



Kevin Bastian
Reg. No. 34,774

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 415-576-0200
Fax: 415-576-0300
Attachments
KLB:art
60499367 v1